

IN THE SUPREME COURT OF THE STATE OF NEVADA

RALPH PERRY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 36349

FILED

FEB 21 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY *J. Zehner*
CLERK DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of possession of a controlled substance with intent to sell, and one count of conspiracy to sell a controlled substance. The district court sentenced appellant to a prison term of 12 to 36 months for each count and ordered the terms to run concurrently. The district court suspended the sentence and placed appellant on probation for a period not to exceed 3 years.

Appellant contends that the district court erred by denying his pre-sentence motion for a new trial. Appellant's motion was based on the fact that after the trial, but before sentencing, appellant was found to be incompetent and sentencing was delayed while appellant was committed to Lake's Crossing.

NRS 178.400(1) provides that a person who is incompetent may not be tried. NRS 178.400(2) defines an incompetent person as one who "is not of sufficient mentality to be able to understand the nature of the criminal charges against him, and because of that insufficiency, is not able to aid and assist his counsel in the defense." (Emphasis added).

In the instant case, six days after the jury returned a guilty verdict, Dr. Dodge Slagle evaluated

appellant and concluded that appellant was "not competent at this time to stand trial due to the presence of some paranoid ideation about the legal process."¹ Dr. Slagle went on to find, however, that appellant did "appear to have a reasonable understanding of the nature of the charges against him and potential outcomes of trial." A subsequent evaluation concluded that appellant was "not competent to stand trial because of his paranoia."²

We note that, pursuant to the statutory definition, an individual may be paranoid and still able to stand trial, so long as the individual is of sufficient mentality to be able to understand the nature of the charges and assist counsel. Neither doctor concluded that appellant was unable to understand the nature of the charges.

Moreover, even assuming that the results of the evaluations show that appellant was incompetent, appellant has failed to demonstrate that he was incompetent at the time of trial, only that appellant may have been incompetent after trial. Appellant has failed to show any evidence that he was incompetent prior to or during trial. In fact, appellant's actions up to and during trial lead one to the opposite conclusion. Counsel for appellant apparently had no concerns regarding appellant's competency. Appellant was canvassed by the district court regarding his desire to testify, and demonstrated that he understood the nature of the charges.

¹For example, Dr. Slagle noted that appellant reported that the district attorney believed that appellant was guilty, that the jury had been selected to convict appellant, and appellant also reported that his attorney "couldn't do nothing."

²Both doctors focused on whether appellant was competent to stand trial at the time of evaluation and did not make any retroactive finding regarding appellant's competency during the period when he was actually tried.

Appellant testified on his own behalf, and from the record, appears to have been lucid and to have had a clear understanding of the charges.

We conclude that appellant has failed to demonstrate that he was not competent to stand trial. "We are unaware of any rule of law that requires a judgment of conviction to be summarily reversed because of a conclusory allegation, made after trial when guilt has already been determined by a jury, that an accused was mentally incompetent."³ We therefore conclude that the district court did not err by denying appellant's motion for a new trial.

Having considered appellant's contention and concluded it is without merit, we

ORDER the judgment of conviction AFFIRMED.

Young, J.
Young
Rose, J.
Rose
Becker, J.
Becker

cc: Hon. Jeffrey D. Sobel, District Judge
Attorney General
Clark County District Attorney
Clark County Public Defender
Clark County Clerk

³Doggett v. State, 91 Nev. 768, 771, 542 P.2d 1066, 1068 (1975).